

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA                     :  
   :  
                  v.                                 :  
   :  
CRISTOFER ABREU-QUERO                     :  
   :

CR 09-125 S

**REPORT AND RECOMMENDATION**

David L. Martin, United States Magistrate Judge

Before the Court is the Application to Proceed without Prepayment of Fees and Affidavit (Docket ("Dkt.") #13) ("IFP Application") filed by Defendant Cristofer Abreu-Quero ("Defendant"). Because I conclude that the IFP Application should be denied, it is addressed by way of this Report and Recommendation. See Lister v. Dep't of Treasury, 408 F.3d 1309, 1312 (10<sup>th</sup> Cir. 2005)(explaining that because denial of a motion to proceed in forma pauperis is the functional equivalent of an involuntary dismissal, a magistrate judge should issue a report and recommendation for a final decision by the district court).

**Discussion**

The IFP Application is not connected to any pleading or petition. It was filed with a Transcript Order (Dkt. #12) by which Defendant seeks a transcript of his sentencing. See Transcript Order. However, Defendant is not entitled to a free transcript because he has not given any specific facts to show that he has

some meritorious claim to present via a petition pursuant to 28 U.S.C. § 2255. See United States v. Desouza, No. 93-1205, 1993 WL 299394, at \*2 (1<sup>st</sup> Cir. Aug. 5, 1993)(concluding district court acted properly in denying defendant's motion for free transcripts); id. at \*1 ("Because [defendant], who is seeking collateral relief, has not even described in general terms what the nature of her claim is, let alone given any specific facts to show that she has some meritorious claim, it is clear that the district court acted properly in denying her request for a free transcript."); see also United States v. MacCollom, 426 U.S. 317, 325, 96 S.Ct. 2086 (1976) (holding that right to free transcript is not necessary concomitant of writ of habeas corpus and noting that "[t]he district court has the power to order a free transcript furnished if it finds that the 'suit ... is not frivolous and the transcript is needed to decide the issue presented ....'")(quoting 28 U.S.C. § 753(f)).

Accordingly, Defendant's IFP Application should be denied without prejudice to being renewed if Defendant provides specific facts showing that he has some meritorious claim to present via a petition pursuant to 28 U.S.C. § 2255. I so recommend.

### **Conclusion**

Accordingly, for the reason stated above, I recommend that Defendant's IFP Application be denied without prejudice. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen (14) days of

its receipt. See Fed. R. Civ. P. 72(b); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ David L. Martin  
DAVID L. MARTIN  
United States Magistrate Judge  
December 1, 2011